KAREN P. HEWITT
United States Attorney
RAVEN M. NORRIS
Assistant U.S. Attorney
State of California Bar No. 232868
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 557- 7157
Facsimile: (619) 557-5004

Attorneys for Petitioner

FILED
08 MAR 21 PM 1:21
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Petitioner, v. NATALIE L. FITCH, Respondent.	Case No. '08 CV 530 IEG CAB PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS Date: June 2, 2008 Time: 10:30 a.m. Crtrm: 1 The Honorable Irma E. Gonzalez

Petitioner, the United States of America, by and through its counsel, KAREN P. HEWITT, United States Attorney, and RAVEN M. NORRIS, Assistant United States Attorney, petitions the Court for an order to enforce the Internal Revenue Service summonses described below and, in support thereof, alleges as follows:

1. This proceeding is brought at the request of the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States.

2. Jurisdiction over these proceedings is conferred upon this Court by Internal Revenue Code 26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C.§ 1345.

3. Venue is proper in the Southern District of California because Respondent, Natalie L. Fitch, resides in this district.

4. At all times relevant, S. Silverman, who issued the summonses to Respondent, was a Revenue Officer with the Internal Revenue Service (hereinafter "IRS"), employed in the Small Business/Self-Employed Division, San Diego, California. See Declaration of Revenue Officer S. Silverman at ¶ 1 (hereinafter "Silverman Decl."). Revenue Officer S. Silverman was authorized to issue an IRS summons pursuant to the authority contained in 26 U.S.C. § 7602, and Treas. Reg. § 301.7602-1. See id.

5. Respondent resides at 13848 Honnell Way, Jamul, California 91935, which is within the geographical jurisdiction of this Court.

6. On June 21, 2005, Revenue Officer Silverman issued three IRS summonses directing Respondent to appear before him on July 7, 2005, at 9: 30 a.m. at 880 Front Street, San Diego, California. The summonses required Respondent to give testimony and produce the documents and records specified in each summons for examination. The first summons related to Respondent's continuing failure to file Form 941 employment tax returns for the tax period beginning July 1, 2003, and ending March 31, 2005, by Concrete Forming Contractors, Inc., a corporation of which Respondent is president (hereinafter "Concrete Forming 941 Summons"). The second summons related to Respondent's continuing failure to file Form 1120 corporation income tax returns for the tax years 2003 and 2004 by Concrete Forming Contractors, Inc. (hereinafter "Concrete Forming 1120 Summons"). Silverman Decl. at ¶3. The third summons related to Respondent's continuing failure to file personal income tax returns for the tax years 2001, 2002, 2003, and 2004. As stated below, the third summons has been replaced and superseded by a new summons issued in April 2007 relating to Respondent's continuing failure to file personal tax returns. Revenue Officer Silverman served the summonses on the Respondent on June 22, 2005, by leaving an attested copy of each summons with Respondent's husband, Larry K. Fitch, at the Respondent's last and ususal place of abode, 13848 Honnell Way, Jamul, California 91935. Silverman Decl. at ¶ 4. Copies of the summonses are attached to the Silverman Decl. as Exhibit A (Concrete Forming 941 Summons), Exhibit B (Concrete Forming 1120 Summons).

7. On July 7, 2005, Respondent's husband, Larry K. Fitch, appeared and provided a copy of a family trust document and certain 2005 bank statements for accounts in the name of the Respondent. On July 7, 2005, at Larry K. Fitch' s request, Revenue Officer Silverman granted additional time to

comply with the summonses, until July 14, 2005. On July 14, 2005, Respondent and Larry K. Fitch appeared and provided an incomplete Internal Revenue Service Form 1040 for the taxable year 2001, certain 2001 bank statements for accounts in the name of a family trust, and a handwritten list of deposits. To date, Respondent has not provided any other documents requested by the summonses. Silverman Decl. at ¶ 5.

8. On September 26, 2005, attorney Karen N. Sommers of the Office of Chief Counsel, Internal Revenue Service, sent a letter to the Respondent providing her with another opportunity to comply with the summonses and directing her to appear before Revenue Officer Silverman on October 14, 2005, at 10:00 a.m. at 880 Front Street, Room 3293, in San Diego, California. Silverman Decl. at ¶ 6. On October 14, 2005, Respondent's husband contacted Revenue Officer Silverman by telephone, stated that Respondent did not have documents in response to the summonses but requested a meeting with Revenue Officer Silverman. Revenue Officer Silverman declined to meet with Respondent's husband unless Respondent could produce documents or testimony in compliance with the summonses. Id. at ¶¶ 6, 7. To date, Respondent has not provided the other documents requested in the summons. Id.

9. On April 3, 2007, Revenue Officer Silverman, as a result of ongoing investigation, issued an updated IRS summons directing Respondent to appear before him on April 24, 2007, at 11:00 a.m. at 880 Front Street, San Diego, California, to give testimony and to produce for examination the documents and records specified in the summons. Specifically, Revenue Officer Silverman sought additional information relating to Respondent's continuing failure to file personal income tax returns for the tax year 2005. Accordingly, the new summons superseded replaced the prior 2005 issued summons and related to Respondent's continuing failure to file personal income tax returns for the tax years 2001, 2002, 2003, 2004, and 2005 (hereinafter "Natalie Fitch Delinquent Returns Summons"). Revenue Officer Silverman served the summons on Respondent on April 11, 2007, by leaving an attested copy of the summons at her last and usual place of abode. Silverman Decl. at ¶ 7. A copy of the summons is attached to the Silverman Decl. as Exhibit C.

10. The Respondent did not appear on April 24, 2007, and to date, Respondent has not provided the testimony or documents requested in the summons. Silverman Decl. at ¶ 8.

11. All administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken. Silverman Decl. at ¶ 10.

12. In order to obtain judicial enforcement of an IRS summons, the United States bears the initial burden of showing "that the investigation will be conducted for a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed..." United States v. Powell, 379 U.S. 48, 57-58 (1964); accord, United States v. Dynavac, 6 F.3d 1407, 1414 (9th Cir. 1993). The burden on the Government is a "slight one" and may be satisfied by presenting the declaration of the agent who issued the summons and is seeking enforcement. Id. (citing United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990)(other citations omitted)). Once a prima facie case has been made, "a heavy burden falls on the taxpayer" to show an abuse of the court's process or lack of institutional good faith. Dynavac, 6 F.3d at 1414. The taxpayer "must allege specific facts and evidence to support his allegations." Liberty Financial Services v. Untied States, 778 F.2d 1390, 1292 (9th Cir. 1985) (citation omitted). This matter may be decided on the written record in a summary proceeding. Hotz v. United States, No. MISC-CV-F-95-32, 1996 WL 159695 at * 2 (E.D. Cal. Jan. 9, 1996). To be entitled to an evidentiary hearing, a respondent must make some showing to refute the United States' prima facie case or present facts supporting an affirmative defense. See Fortney v. United States, 59 F.3d 117, 121 (9th Cir. 1995).

13. Revenue Officer Silverman is conducting an investigation to determine Respondent's income tax liabilities for the years 2001 through 2005, to determine the employment tax liabilities of Concrete Forming Contractors, Inc., for tax periods beginning July 1, 2003, and ending March 31, 2005, and to determine the income tax liabilities of Concrete Forming Contractors, Inc., for the tax years ending 2003 and 2004. Silverman Decl. at ¶ 2.

14. The Internal Revenue Code specifically allows the issuance of a summons for the purpose of "determining the liability of any person for any internal revenue tax...or collecting any such liability..." 26 U.S.C.§ 7602(a). Therefore, Revenue Officer Silverman's investigation is being conducted pursuant to a legitimate purpose specifically authorized by statute.

///

15. Further, with the exception of the items discussed above in paragraph 7, the books, papers, records, or other data sought by the summonses are not already in the possession of the IRS, and the administrative steps required by the Code, including proper service, have been followed. Silverman Decl. at ¶¶ 4, 7, 9, and 10.

16. Respondent is in possession and control of testimony and documents concerning the above-described investigation.

17. The Internal Revenue Code permits the Secretary to summon the records of any person "which may be relevant or material" to the investigation. 26 U.S.C. § 7602(a)(1). It is well-settled that to satisfy the relevancy requirement set forth in Powell, the United States must demonstrate that the summoned information may "throw light" on the subject of the investigation. United States v. Arthur Young & Co., 465 U.S. 805, 813-14, n. 11 (1984). This standard necessarily presents a low threshold because of the inherent difficulties in ascertaining, prior to examination, how much use the summoned records will be in determining the collectibility of a person's tax liability and whether a person has an income tax liability for a specific period. The Supreme Court has observed that:

> [a]s the language of §7602 clearly indicates, an IRS summons is not to be judged by the relevance standards used in deciding whether to admit evidence in federal court . . . . The language "may be" reflects Congress' express intention to allow the IRS to obtain items of even potential relevance to an ongoing investigation, without reference to its admissibility. The purpose of Congress is obvious: the Service can hardly be expected to know whether such data will in fact be relevant until they are procured and scrutinized.

Arthur Young & Co., 465 U.S. at 814 (internal citation omitted) (emphasis in original). This low threshold of relevance also follows from the language of the Code, which authorizes the investigation of persons who "may be liable" for taxes. 26 U.S.C. § 7601.

18. Under the instant circumstances, it is clear that the summoned material is relevant. One purpose of Revenue Officer Silverman's investigation is to determine Respondent's ability to pay the individual income tax liabilities assessed against her for the taxable years 2001 through 2005. The Natalie Fitch Delinquent Returns Summons seeks, among other things, information " . . . reflecting the receipt of taxable income . . . " during the years 2001, 2002, 2003, 2004, and 2005. Silverman Decl. at Exhibit D. The documents sought by the summons are clearly relevant to the determination of the respondent's income tax liabilities for the taxable years 2001 through 2005. Another purpose of Revenue Officer

Silverman's investigation is to determine the employment tax liabilities of Concrete Forming Contractors, Inc., for tax periods period beginning July 1, 2003, and ending March 31, 2005. The Concrete Forming 941 Summons seeks, among other things, records ". . . relating to wages paid . . ." Id. at Exhibit A. The documents sought by these summons are clearly relevant to the determination of the employment tax liabilities of Concrete Forming Contractors, Inc. Finally, Revenue Officer Silverman's investigation must also determine the corporation income tax liabilities of Concrete Forming Contractors, Inc., for the tax years 2003 and 2004. The Concrete Forming 1120 Summons seeks, among other things, books and records ". . . reflecting the receipt or accrual of all income and expenses . . ." Silverman Decl. at Exhibit B. The documents sought by this summons are clearly relevant to the determination of the corporation income tax liabilities of Concrete Forming Contractors, Inc.

19. There is no Department of Justice referral for criminal prosecution in effect with respect to the Respondent or Concrete Forming Contractors, Inc. Silverman Decl. at ¶12.

WHEREFORE, the United States requests that:

1. The Court enter an order directing Respondent, Natalie L. Fitch, to show cause, if any, why she should not comply with and obey the above-described summonses (Silverman Decl. at Exhibits A, B, and C) served on her on June 22, 2005, and on April 11, 2007, and each and every requirement thereof, by ordering the attendance, testimony, and production of books, papers, records, and other data required and called for by the terms of the summonses before Revenue Officer S. Silverman, or any other proper officer or employee of the Internal Revenue Service at such time and place as may be fixed by Revenue Officer Silverman or any other proper officer or employee of the Internal Revenue Service.

2. The United States recover the costs and expenses incurred maintaining this action against Respondent.

3. That the Court grant such other and further relief as may be required.

Dated: March 21, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

RAVEN M. NORRIS
Assistant U.S. Attorney
Email: Raven.Norris@usdoj.gov
Attorneys for Petitioner

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

The United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 619-557-7157
Raven M. Norris, Assistant U.S. Attorney;Civil Division, Office of the U.S. Attorney, 880 Front Street, Rm 6293, San Diego, CA 92101

DEFENDANTS

Natalie L. Fitch

08 MAR 21 PM 1:20

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

DEPUTY

Attorneys (If Known)

'08 CV 530 IEG CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [X] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- [X] 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- [X] 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C. § 1345

Brief description of cause:
Petition to Enforce Internal Revenue Summonses

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/21/2008

SIGNATURE OF ATTORNEY OF RECORD
Raven M. Norris, Civil Division
U.S. Attorneys Office

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE